

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11598-WGY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF BOSTON, MASSACHUSETTS;
THOMAS M. MENINO, in his
official capacity as Mayor of
the City of Boston; BOSTON
CITY COUNCIL; MICHAEL F.
FLAHERTY, PAUL J. SCAPICCHIO,
JAMES M. KELLY, MAUREEN E.
FEENEY, CHARLES C. YANCY, ROB
CONSALVO, JOHN TOBIN, CHUCK
TURNER, MICHAEL P. ROSS, JERRY
P. MCDERMOTT, FELIX D. ARROYO,
MAURA HENNIGAN, STEPHEN J.
MURPHY; BOSTON ELECTION
DEPARTMENT; GERALDINE CUDDYER,
in her official capacity as
Chair of the Boston Election
Department; SECRETARY OF THE
COMMONWEALTH OF MASSACHUSETTS,

Defendants.

**CITY OF BOSTON DEFENDANTS' MOTION TO DISMISS INTERVENOR
DEFENDANT SECRETARY OF THE COMMONWEALTH'S CROSS-CLAIMS**

NOW COME the Defendants, City of Boston ("the City"), and
move this Honorable Court pursuant to Fed.R.Civ.P.

12(b)(1), to dismiss all Counts of the Intervenor Defendant
Secretary of the Commonwealth's cross-claims directed
against it (Counts I through IV).

As grounds therefore, the City states that:

1. There is no case or controversy presently before the Court and, as a result, the Secretary of the Commonwealth's cross-claims are moot.
2. The Court should not exercise supplemental jurisdiction over the cross-claims as:
 - i. The cross-claims set forth by the Secretary of the Commonwealth arise out of a distinct and separate nucleus of facts than the underlying Complaint.
 - ii. The cross-claims raise novel or complex issues of State law.
 - iii. The cross-claims asserted by the Secretary are state law claims and thus predominate over any federal issue raised in the underlying Complaint.

The City submits the attached Memorandum of Law in further support of this motion.

WHEREFORE, the City of Boston respectfully moves this Court to dismiss all cross-claims (Counts I through IV) filed by the Secretary of the Commonwealth.

Respectfully submitted,

DEFENDANTS, CITY OF BOSTON
AND THOMAS M. MENINO

By their attorneys:

William F. Sinnott
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and will therefore be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 12, 2007.

/s/ Sean Nehill
Sean Nehill